

DOUG AVERY

VS.

Respondent

AND

Insurance Carrier

The preliminary hearing Order should be affirmed.

(1) The Appeals Board finds that claimant injured his back while working for the respondent as alleged. Claimant's job, fabricating sheet metal products, required him to lift up to 100 pounds and constantly bend at the waist. Although claimant did not experience a single traumatic event, the evidence supports the conclusion that claimant's back injury occurred as the result of mini-traumas which the Administrative Law Judge found to have culminated in injury on July 11, 1996.

(2) The Appeals Board also finds that claimant provided respondent with timely notice of accident. After July 11, 1996, claimant began missing work due to his back pain. At that time claimant advised Mr. Jim Mellies, respondent's president, that he could not perform his work because it was too painful. In August 1996, claimant again advised Mr. Mellies that he could not work due to his back pain.

When considering the entire record, the Appeals Board finds that claimant's statements to Mr. Mellies in July 1996 constituted notice of claimant's work-related accident as required by K.S.A. 44-520. The evidence is clear and uncontroverted that Mr. Mellies knew of the heavy physical labor required by claimant's job and also knew in July 1996 that claimant's work was causing or, at the very least, aggravating claimant's back. The Appeals Board is impressed with Mr. Mellies' candor.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated January 31, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Heather Nye, Kansas City, MO
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director